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FOR IMMEDIATE RELEASE

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**U.S. FILES AMENDED COMPLAINT TO ADD TWO MEDCO HEALTH
EXECUTIVES AS DEFENDANTS IN FALSE CLAIMS
ACTION AGAINST MEDCO HEALTH SOLUTIONS – NEW COUNT
ALSO ADDED AGAINST MEDCO FOR KICKBACKS TO
HEALTH PLANS**

**Alleged Violations Now Include Claims Against Executives For Cancelling, Deleting,
or Destroying Patient Prescriptions In Connection With Contract Turnaround
Requirements, And A Claim Against Medco For Improper Payments To Health
Plans To Obtain Federal Contracts**

PHILADELPHIA – United States Attorney Patrick L. Meehan announced today the filing of the Government's amended complaint in intervention in two "whistleblower" actions brought under the federal False Claims Act and state False Claims Acts against Medco Health Solutions, Inc. ("Medco"). This action follows the filing of the Government's initial complaint September 29, 2003.

The amended complaint adds two new defendants, Robert J. Blyskal of New Jersey and Diane M. Collins of Florida. Blyskal, the former executive vice-president of Medco (until March of 2003) is charged with causing the submission of false claims to the United States by conducting a coverup of intentional destruction of patient prescriptions at Medco Health's Tampa II mail order pharmacy in 1998, and making misleading statements about that coverup when questioned by the Department of Justice. Collins is charged with violating the False Claims Act by destroying and directing the destruction of patient prescriptions at the Tampa II pharmacy in order to appear to be providing prescriptions on a timely basis in 1999 and 2000. The amended complaint adds an additional count against Medco under the Public Contract Anti-Kickback Act, 41 U.S.C. 51, for making improper payments to health plans to induce them to select Medco as a pharmacy benefit manager for government contracts.

These violations, according to the complaints, arose out of Medco's contract with the Blue Cross and Blue Shield Association to provide mail order prescription drug benefits to federal employees, retirees, and their families.

"The conduct alleged in the complaint is a financial fraud on employee health benefits programs funded in whole or in part by the United States. Moreover, it is a fraud on the patients

who rely upon Medco mail order pharmacies for their prescriptions, and on the judgment and professionalism of the licensed pharmacist which safeguards their health,” said Meehan.

“Patients who use mail order pharmacies have paid for and should receive the same professional quality and commitment that they receive from their neighborhood pharmacist. Pressure by an employer to reduce costs and increase profits must never be allowed to coerce pharmacists into ignoring their duties to patients. Getting the proper medication in the hands of patients as quickly and efficiently as possible should be the mission of any pharmacy benefit manager. However, these allegations suggest that, somewhere along the line, the focus became the profit instead of the patient.”

The Complaint filed in September alleged that Medco engaged in the following conduct:

- 1) Cancelling, deleting and destroying patients’ mail order prescriptions so that Medco could avoid penalties for its repeated delays in filling and mailing patient prescriptions;
- 2) Mailing prescriptions to patients with less than the number of pills ordered and paid for (“shorting”), and charging both patients and health plans as if they had dispensed the full amount;
- 3) Creating false records showing that physicians had been contacted to discuss the proper drug, or the proper dosage or dispensing instructions, when no such contact had been made;
- 4) Creating false records showing that physicians had been contacted to discuss the risk of adverse drug interactions for a patient, when no such contact had been made;
- 5) Intimidating and coercing pharmacists in order to certify new prescriptions for filling without direct contact with the treating physician, when the professional judgment of the pharmacist was that a call was required;
- 6) Making false statements to patients that mail order prescriptions had not been received, when in fact the prescription had been received and then cancelled in order to appear to meet contractually required turnaround times;
- 7) Billing the United States and patients for prescriptions not authorized by law to be filled;
- 8) Making false statements to the United States during the investigation of Medco’s illegal conduct;
- 9) Changing prescriptions based upon misleading or false information provided to treating physicians;

- 10) Making false statements to the Blue Cross Blue Shield Association about compliance with contract requirements that prescriptions be mailed within so many days of receipt;
- 11) Inducing physicians to authorize switching of prescriptions from lower to higher cost medications while representing that the switch was for the purpose of reducing prescription costs for the health program;
- 12) Favoring Merck drugs over other manufacturer's drugs in switching programs, even when the Merck drugs were more expensive;
- 13) Failing to comply with state laws requiring appropriate drug utilization review by a pharmacist and consultation with the treating physician where there is a potential for harmful interaction among drugs prescribed for a patient;
- 14) Fabricating records of calls by pharmacists to physicians;
- 15) Failing to call physicians for clarification, as required by governing law, when the prescription received by the pharmacist is ambiguous.

Copies of the Government's Amended Complaint, Complaint in Intervention, the Government's notice of intervention, and each relator's complaint are available on the U.S. Attorney Web site, www.usdoj.gov/usao/pae.

Under the False Claims Act, a "whistleblower," known as a "relator," files a complaint on behalf of the United States "under seal," that is, with the District Court in files not available to the defendant or the public. After investigation, the United States must decide whether to intervene and participate in the prosecution of the action with the relators' counsel, or to decline to participate and permit the relators' counsel to prosecute the action alone. The relator retains the right to prosecute declined claims or parties. The case is unsealed by the court at the time of the intervention or declination.

It is customary for the United States, upon intervention in a pending qui tam action, to prepare, file and serve its own complaint after the date of intervention. This amended complaint sets forth the factual allegations that the United States is prepared to adopt and allege against the defendants as the result of its investigation. In "whistleblower" actions in which the United States intervenes, the United States may adopt some or all of the relators' factual allegations. The United States' complaint may assert additional claims under statutes other than the False Claims Act, or the common law which the relators are not entitled to assert. The United States may also assert claims under the False Claims Act or other laws against individuals or entities not named in the relators' complaints.

These qui tam actions, both filed in the United States District Court for the Eastern District of Pennsylvania, have been consolidated and assigned to Senior Judge Clarence Newcomer.

In this case, as in all civil False Claims cases, the claims made in the complaints are allegations only. The defendants have a right to a jury trial on each of the claims, and the United States must prove each of the claims by a preponderance of the evidence. Each of the defendants has the right to present evidence on its behalf, and to cross-examine witnesses called by the United States and the relators.

The notice of intervention follows an extensive investigation of the factual allegations and evidentiary support provided by the relators. This investigation was conducted by the United States Attorney's Office, Eastern District of Pennsylvania, together with the Office of Inspector General of the Office of Personnel Management, The Office of Inspector General of the Department of Health and Human Services, and the Defense Criminal Investigative Service. State Attorneys General are also examining related issues in coordination with the Department of Justice.

The handling of this case by the United States Attorney's Office is primarily assigned to Associate United States Attorney James G. Sheehan.

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